

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Javan Moore,)	C/A No. 4:13-2139-RMG-TER
)	
Plaintiff,)	
)	
v.)	ORDER
)	
Sheriff Chuck Wright,)	
)	
Defendant.)	
_____)	

This is a civil action filed by a state prisoner. Therefore, in the event that a limitations issue arises, Plaintiff shall have the benefit of the holding in *Houston v. Lack*, 487 U.S. 266 (1988) (prisoner's pleading was filed at the moment of delivery to prison authorities for forwarding to District Court). Under Local Civil Rule 73.02(B)(2) of the United States District Court for the District of South Carolina, pretrial proceedings in this action have been referred to the assigned United States Magistrate Judge. By Order dated August 21, 2013, Plaintiff was given a specific time frame in which to bring this case into proper form. Plaintiff has complied with the court's Order, and this case is now in proper form.

MOTIONS TO APPOINT COUNSEL:

Plaintiff asks this Court to appoint him legal counsel to represent him in this case without charge. ECF Nos. 14, 18. He alleges that he lacks education and lost his eye as the basis for his request. The Congress does not appropriate funds to pay attorneys who represent litigants in civil rights cases or in non-capital habeas corpus cases. *In re Forma Pauperis Proceedings*, B-139,703, 53 Comp. Gen. 638 (Comp. Gen. Feb. 28, 1974). Although this economic fact is not conclusively determinative of the issue, it is a practical consideration which cannot be ignored. Moreover, it has been authoritatively stated in this context that a person who has a legitimate civil rights claim for damages "will likely find private counsel available on a contingent fee basis." *Williams v. Leeke*, 584 F.2d 1336, 1339 (4th Cir. 1978). In most civil rights and non-capital habeas corpus cases, the issues are not complex, and whenever such a case is brought by a pro se litigant, this Court outlines proper procedure so the pro se litigant will not be deprived of a fair opportunity to present his or her case. *See Roseboro v. Garrison*, 528 F.2d 309, 310 (4th Cir. 1975). In some instances, of course, a failure to make a discretionary appointment of counsel may represent an abuse of discretion, but this is not the exceptional type of case which presents factors that clearly reflect a need for Plaintiff to have counsel appointed.

Plaintiff's Motions to Appoint Counsel are **DENIED**.

PAYMENT OF THE FILING FEE:

By filing this case, Plaintiff has incurred a debt to the United States of America in the amount of \$350.* See 28 U.S.C. § 1914. This debt is not dischargeable in the event Plaintiff seeks relief under the bankruptcy provisions of the United States Code. See 11 U.S.C. § 523(a)(17). The Prison Litigation Reform Act (PLRA) of 1996 permits a prisoner to file a civil action without prepayment of fees or security, but requires the prisoner “to pay the full amount of the filing fee” as funds are available. See 28 U.S.C. § 1915(a), (b). As the Court has granted Plaintiff permission to proceed *in forma pauperis*, **the agency having custody of Plaintiff shall collect payments from Plaintiff’s prisoner trust account in accordance with 28 U.S.C. § 1915(b)(1) and (2), until the full \$350 filing fee is paid.** See *Torres v. O’Quinn*, 612 F.3d 237, 252 (4th Cir. 2010) (“We hold that 28 U.S.C. § 1915(b)(2) caps the amount of funds that may be withdrawn from an inmate’s trust account at a maximum of twenty percent *regardless of the number of cases or appeals the inmate has filed.*”) (emphasis in original).

Plaintiff submitted an Application to Proceed Without Prepayment of Fees and Affidavit (Form AO 240) and a Financial Certificate, which are construed as a Motion for Leave to Proceed *in forma pauperis*. ECF No. 15. See 28 U.S.C. § 1915(a)(1), (2). A review of the Motion reveals that Plaintiff does not have the funds to pay the first installment of the filing fee. Therefore, the amount due from Plaintiff is currently \$350.

Plaintiff’s Motion for Leave to Proceed *in forma pauperis* is **granted**.

TO THE CLERK OF COURT:

This case is subject to summary dismissal based on an initial screening conducted pursuant to 28 U.S.C. §1915 and/or 28 U.S.C. § 1915A. Therefore, the Clerk of Court shall ***not*** issue any summonses nor shall the Clerk of Court forward this matter to the United States Marshal for service of process at this time.

IT IS SO ORDERED.

s/Thomas E. Rogers, III
Thomas E. Rogers, III
United States Magistrate Judge

October 1, 2013
Florence, South Carolina

* Effective May 1, 2013, an administrative fee of \$50 is added to the filing fee of \$350. The \$50 administrative fee, however, is not applicable to *in forma pauperis* cases.